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OFFICE OF PETITIONS

In re Application of
Brown, Van H.
Application No. 10/661,201
Filed: September 12, 2003
For: Pet Chew Toy

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: Decision
: On Access
: Petition
:

This is in response to the "Petition for Access" filed by Michael Brooks on behalf of Christopher Alan Weinberg which was filed on February 27, 2004. In response to a three week letter mailed March 25, 2004, applicant filed papers on April 15, 2004 opposing the access request.

The petition is **DISMISSED**.

A member of the public may be entitled to access if "special circumstances" are shown which warrant a grant of access under 35 U.S.C. § 122. See Manual of Patent Examining Procedure (MPEP), Section 103.

Petitioner states that special circumstances exist in that he is at least an owner of the subject matter in a predecessor provisional application, if not an inventor who should have been named in the above-identified application. As stated by petitioner, the above referenced application claims priority to provisional application no. 60/410,098 which names petitioner as an inventor. As a result of his ownership/inventorship of the '098 application petitioner believes he needs access to the above referenced application to ascertain his rights.

Applicant in opposing access to the above referenced application states that there is no agreement giving petitioner ownership rights in the application. Applicant also states that including petitioner as a coinventor of the '098 application was an error and that he is not a coinventor of the above referenced application.

With respect to ownership, the Office does not make ownership determinations with respect to unnamed inventors in patents or patent applications. Mr. Weinberg is an owner of the '098 application since he has not assigned his rights and because a named inventor is treated as the owner of an application in the absence of an assignment. As to the '201 application, Mr. Weinberg is neither a named inventor nor an assignee.

With respect to the inventorship issue, Mr. Weinberg is a coinventor of the provisional application since applicant has not taken steps to "correct" the inventorship in the provisional application. The inventorship is not automatically carried forward to later filed applications. Access is not

granted to an unnamed coinventor. Furthermore, a third party has no standing to request a change of inventorship or participate in the prosecution of an application even if the inventorship is incorrect. See 37 C.F.R. 1.48. If petitioner believes that the invention claimed in the above referenced application is his own, he can protect his rights by filing a protest in the above referenced application with evidence that the invention therein is by another inventive entity. Petitioner may also file his own patent application naming what he believes to be the correct inventive entity. Inventorship would then be determined in interference proceedings between his application and the '201 application.

With respect to notifying petitioner of the status of the above referenced application, applicant opposes a status request on the basis that he is not a co-owner or inventor. Petitioner however, has a duty under 37 C.F.R. 1.56 to notify the office of any related copending applications. The '098 application naming petitioner as an inventor is related to the '201 application. Since petitioner is advised above to file his own patent application, the requirement constitutes sufficient special circumstances to advise petitioner that the status of the above referenced application is that it is pending.


The request for access is DISMISSED, but maybe renewed if petitioner provides evidence to establish special circumstances that warrant access to the application beyond that currently of record.

Any correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
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 Attn: Office Patent Legal Administration/Michael L. Lewis

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